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ABSTRACT

This paper discusses current court rulings on academic freedom at the college and university level. The paper focuses on three cases: "Hall v. Kutztown," in which the U.S. District Court for the Eastern District of Pennsylvania ruled that Kutztown University violated the free speech rights of a philosophy professor when it rejected him for two tenure-track positions after he voiced opposition to multicultural education and criticized "barbaric" cultural practices in some countries of Africa and Asia; "Kincaid v. Gibson," in which the U.S. District Court of the Eastern District of Kentucky granted summary judgment for the University of Kentucky, denying any claims of infringement of the First Amendment in the refusal to distribute the school yearbook; and "Loving v. Boren," in which the U.S. Court of Appeals for the 10th Circuit upheld a lower-court decision that a University of Oklahoma professor lacked standing to challenge university restrictions on access to sex-oriented material on the Internet. It is argued that these decisions offer a snapshot view of a narrowing of the concept of academic freedom and of the distinction between academic freedom and freedom of expression, a distinction that is too often overlooked by those who "blithely" assume the power of academic freedom. Contains 27 notes. (NKA)

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"Current Cases on Academic Freedom"

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In this essay I will discuss current court rulings on academic freedom at the college and university level. The focus will be on three cases: Hall v. Kutztown, in which the U.S. District Court for the Eastern District of Pennsylvania ruled that Kutztown University violated the free-speech rights of a philosophy professor when it rejected him for two tenure-track positions after he voiced opposition to multicultural education and criticized "barbaric" cultural practices in some countries of Africa and Asia; Kincaid v. Gibson, in which the United States District Court for the Eastern District of Kentucky granted summary judgment for the University of Kentucky, denying any claims of infringement of the First Amendment in the refusal to distribute the school yearbook; and Loving v. Boren, in which the U.S. Court of Appeals for the 10th Circuit upheld a lower-court decision that a University of Oklahoma professor lacked standing to challenge university restrictions on access to sex-oriented material on the Internet. I argue that these decisions offer a snapshot view of a narrowing of the concept of academic freedom, and of the distinction between academic freedom and freedom of expression, a distinction that is too often overlooked by those who blithely assume the power of academic freedom.

Academic Freedom

Probably the most important point to remember about academic freedom, at least in the context of this essay, is this: Academic freedom$_1$ is a concept that has nowhere near the long tradition that freedom of conscience and expression has. Historically, academic freedom is a child of the 19th century. Rhetorically, academic freedom is a rallying cry that has not extended

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far past the walls of the University. Legally, academic freedom is little more than a subset of the larger realm of freedom of expression[2].

The key document providing the current conception of academic freedom is the 1940 report of the American Association of University professors. This report was a culmination of more than 25 years of work on the part of the academy to gain a measure of self-rule and the freedom to operate without undue interference from the state. There were three key provisions to this report concerning academic freedom, and they remain largely unchanged following revisions[3].

There were a number of benefits from this statement (a statement which still stands as the most up-to-date statement on academic freedom in the United States), but three stand out. First, this document offered a clear definition of what academic freedom was and how it was practiced. Secondly, this published document served as a standard for evaluating how academic institutions functioned in creating and protecting academic freedom. Finally, the document proved to be acceptable to most academic institutions. While not always adopted as the official policy by the institution, and while adopted piecemeal or in watered-down versions by others, the 1940 report did at least serve as unofficial policy in almost all cases[4]. This document, however, was hardly all-powerful, and as the "red scare" of the late 40s and 50s progressed, as noted above, many academics were caught in the bind between academic freedom and the anti-sedition laws of the country[5].

Walter Metzger offers the best short summary of the

relationship between academic freedom and freedom of expression: "The connections between free speech and academic freedom are many and subtle. One thing is clear as far as their historical linkages are concerned: the advance of the one has not automatically produced a comparable advance of the other[6]." Freedom of expression is the larger and more comprehensively developed of the two concepts. Freedom of expression also has more clearly-structured legal history than does academic freedom. Freedom of expression is less a concept and more a specialized area of law and scholarship, while academic freedom remains more an ideal that is used to justify some academic practices. As such, while academic freedom may lack the legal power of freedom of expression, it still retains rhetorical power, and in the community of academia, calling for support on the ideal of academic freedom remains a potent, pre-legal, strategy. Additionally, many colleges and universities maintain specific policies outlining their support (at least in theory) for academic freedom. In cases where faculty associations and organizations exist, some of these policies have the force of law as they are written into collective bargaining agreements.

As noted above, academic freedom is not an established legal safety net for university faculty. And as also noted above, neither is freedom of expression an always ready defense for academics. In the rest of the essay, I will look at three cases that provide a quick look at trends in academic freedom, trends which do not bode well for academics who step out of the mainstream.

Hall v. Kutztown University

Plaintiff Dr. Richard A. Hall, Ph.D., University of

Toronto, a naturalized American citizen, claimed that the defendants (Carl Brunner, dean of Liberal Arts and Sciences at Kutztown University since 1991; Richard Collings, provost of Kutztown University from 91-96; and David McFarland, president of Kutztown University) violated his First and Fourteenth Amendment rights to free speech when they refused to hire him for a tenure track position after he made controversial remarks at a faculty meeting, and that Kutztown University is guilty of race and gender discrimination in violation of Title VII for failure to hire defendant, a white, anglo-saxon male.

In deciding this case, the District Court for the Eastern District of Pennsylvania waded through loads of material relating to hiring practices, evaluation procedures, affirmative action policies, and freedom of speech claims.

Faculty Evaluation system

Article XII of the collective bargaining agreement between the faculty and the State System of Higher Education, the governing body of the Pennsylvania State University System, involves an evaluation system for faculty, with each department having its own variation, which must comply with the master agreement. As part of the agreement, there is a provision for members of the department promotion, Evaluation and Tenure (PET) committees to observe classroom teaching, complete a Faculty Observation Form, discuss the observation with the classroom instructor, and then prepare a narrative report of the observation, which is submitted to the Dean and the faculty member being evaluated. The department chair also observes the instructor.

Student evaluations are also completed and

tabulated. The student evaluation form has two parts with part A consisting of 21 multiple choice questions, and part B of two open ended narrative response questions. part B results are the property of the faculty member, but are generally a part of the evaluation process and are shared with PET committee members and the chair. Administrators do not see the part B material until the faculty member submits such as part of an application for promotion or tenure. Tenure track and temporary faculty are evaluated annually. The Dean noted that he gives more attention to tenure track faculty than to temporary faculty.

Kutztown University, as part of the SSHE, was involved with the system's Equity plan, a plan designed to encourage departments to add more qualified women and minorities to the teaching staff. The Affirmative Action office of the school may send a memo to the department with a list of self-identified women and minority candidates, encouraging the department to interview those candidates if they meet the search criteria. The search committee at Kutztown University in Philosophy generally follows a standard academic practice of utilizing the search criteria (position description and scholarly requirements) to narrow the pool of applicants to a short list for interviews. After the interview process, the collective bargaining agreement provides that a department reach a majority for a hire. The philosophy department generally works by consensus, rather than vote. After the Department, the recommendation moves to the Dean of the appropriate college, Brunner in this case, then the Affirmative Action officer, and then the provost, then the president. Generally, once it leaves the Dean's office, the

decision is rubber stamped the rest of the way.

Brunner testified that he had not received pressure from higher up to hire minority/women candidates rather than white males. philosophy department members, in deposition, stated that they had the impression that the administration preferred that women and/or minorities--rather than white males--be hired for the Kutztown University faculty. The plaintiff was hired for a temporary position on June 28, 1993. Prior to that Dr. John Lizza was also hired to a temporary position, as the department had two vacancies to fill.

General Education

In 1991, Kutztown University began developing a new general education program. An April 19, 1994 faculty meeting for all faculty in the College of Liberal Arts and Sciences was held to discuss a proposed general education program which included a component of multicultural education. Dean Brunner, at the meeting, is reported to have said (he is not clear he used these exact words) "I don't see how there could be, but is anyone here opposed to multicultural education?" The plaintiff expressed his disagreement in a "dramatic and forceful manner." There are differing recollections among plaintiff and defendants and others of the exact content of the remarks.

Plaintiff stated that he commented that multicultural education is not a good thing, citing specific examples of what he called "barbaric practice" of other cultures

> such as female circumcision in the Sudan, slavery in other African countries, bride-burning in India, and discrimination against women

in Islamic countries. The plaintiff recalls saying that Westerners have a moral duty to stand up against such objective evils. Overall, according to the plaintiff, his remarks reflected the philosophical doctrine of moral absolutism, as opposed to moral relativism[7].

The Dean recalled the plaintiff stating something to the effect that there were certain cultures that the plaintiff "abhors." There was no discussion of the remarks at the faculty meeting, though the Dean recalls one faculty member, a female, commenting to the Dean in private something to the effect of 'Why do we have somebody like that on our faculty?'" One philosophy faculty member, Ferreria, recalled that there was discussion of the plaintiff's remarks , and that he felt that the plaintiff and others were debating the issue in a healthy manner.

The search for the tenure track position

Both the plaintiff and Dr. Lizza were candidates for the tenure track position in the 1993-94 academic year, which included a pool of 230 applicants, 24 of whom were women, with 8 of the women candidates possessing a Ph.D. None of the women candidates made the short list for interviews. The Dean was not satisfied with the Philosophy Department's arguments that none of the women candidates were qualified and asked the department to review the pool one more time and "give greater consideration to women and minority applicants.[8]" The philosophy search committee did so, adding points to the minority candidates and raising their numeric scores on the master list of candidates. The department disagreed with the Dean and the Affirmative Action officer

about the extent to which the department conducted an affirmative action search, and the dean and the Affirmative Action officer refused to approve the interview list which did not contain any women or minority applicants. After further meetings, the department agreed to fill the position on a temporary basis and do a new search in the next year. The department believed that the administration wanted a women or minority hire, though that was never explicitly stated, and the Dean and the provost maintained that they simply wanted a "rich pool" of applicants from which to hire the best candidate.

Tenure Track position in 1994-95 (for 95-96)

The department now had two positions to fill, as another faculty member was retiring. After the search process, the department identified 11 candidates to interview, none of whom were women,but also identified two women candidates they were willing to interview in addition to but not in place of any of the other candidates. After reviewing the list, the administration gave the department approval to interview six men, the two women, and Dr. Lizza and the plaintiff since they would both be on campus anyway. The interviews were conducted, with the two women candidates declining to continue the process. Dr. Lizza was soon accepted as the top candidate and was offered one of the appointments.

The search committee asked to extend the search, identifying four more candidates, including one woman, added for gender reasons. permission was granted. After further deliberations, and some concern, the department denied to support the plaintiff for the second position. The Dean met with the search chair, and indicated that there may be a problem with the plaintiff. The Dean then further

reviewed the plaintiff's student evaluations, and though the dean had noted no problems upon earlier review, the Dean now concluded that some of the comments on part a of the evaluation "evidenced significant problems with the plaintiff's teaching performance.9" The Dean then notified the department that he would not support the departments recommendation to hire the plaintiff. The Dean stated that the plaintiff's teaching evaluations were the reasons for denial not the comments made at the general education meeting. The philosophy department tried to get the Dean , and then the Provost, to change their minds, but were unsuccessful.

None of the philosophy Department members believed that the teaching evaluations or other qualifications were sufficient to reject the candidate.The department could not agree on a second choice for the position, and decided to fill the position on a temporary basis. The department proposed that the plaintiff be given the position, which was denied by the Dean. the Department then appointed Dr.Leemon McHenry, a white male, to the one year position.

Tenure Track position in 95-96 (for 96-97

Dr. Ferreria was search chair, and worked more closely with Affirmative Action and was more receptive in principle to hiring a women or minority candidate. The plaintiff was an applicant, but the search committee declined to place the plaintiff's name on the short list as he had been rejected in the past. The search committee declined to place the plaintiff's name on the short list even though they felt that the plaintiff's qualifications were just as good if not better than some on the short list. The search committee was delayed in hiring because of a

retrenchment at another SSHE school. The top candidate for the position, a white male, declined to be interviewed. The department eventually recommended Dr. McHenry for the position,despite some concerns over his qualifications. The Dean and the provost refused to approve the recommendation, citing concerns over McHenry's teaching evaluations at Kutztown University and another institution. The Department then recommended Dr. Huang, a Chinese national, with a background in religious thought, an area that the department felt complemented the rest of the department. The department stated that Huang's ethnicity did not factor into considerations. Administration concurred, and Huang was hired.

This was the history at Kutztown that led to the action sought by the plaintiff. In considering the plaintiff's claims of freedom of speech violations, the Court evaluated the case via a four-part test: 1) Were the plaintiff's remarks at the faculty meeting protected by the 1st Amendment? 2) If so, was that speech a prohibitive factor in the hiring of the plaintiff? 3) If it was a factor, could there have been other reasons not to hire plaintiff? 4) If all above decided in plaintiff's favor, are defendants entitled to qualified immunity?

Was the speech protected?

This was a question of law according to the Court, with the burden on the plaintiff. In order for a public employee's speech to qualify for such protection, it must address a matter of public concern[10]. The Supreme Court has explained that "[w]hether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as

revealed by the whole record.[11]"

The defendant wanted the statement to be treated as commentary upon the general education curriculum; the plaintiff wanted it treated as a speech addressed to a public concern.The court agreed with the plaintiff that he was speaking about a matter of public concern[12]. The normal next step would be a balancing test between plaintiff's right to speak and defendants' right to keep order[13]. The defendants, however, conceded that balancing test would support plaintiff.

Was speech a motivating factor?

Plaintiff has burden once again. Brunner stated that the plaintiff's remarks were not a motivating factor , that concern over teaching was the factor. The court disagreed, and found the the p supplied sufficient evidence to support the claim that the speech he made was a motivating factor in the decision.

Evidence included the previous reviews by the Dean of the plaintiff's teaching evaluations noting that the plaintiff was considered a good to very good teacher. Brunner claims that the comments were primarily boilerplate due to the temporary status of the plaintiff. The Court stated that such is a possibility but to accept the argument in its entirety would be to call into question the entire evaluation process. Secondly, the plaintiff had comparable student evaluations to Dr.Lizza, who was hired by the Department for a tenure track position. Finally, there were the comments made by the Dean concerning the possible hiring of the plaintiff

Other Factors that Outweighed the Speech?

The Court said no. The records of the two

candidates compared (Lizza and the p) were fairly equal, and there were some areas where the plaintiff was better than Lizza. There is no evidence to support the argument that the defendant was motivated by a factor greater than the plaintiff's speech.

Can the defendants claim qualified immunity?

Defendants must show that a "reasonable pubic official would not have known" that the conduct the defendants engaged in violated the rights of the plaintiff. This is determined by a two- part test[14]: 1) Objectively, was plaintiff's right clearly established?
2) Subjectively, would a reasonable person have known whether he or she was violating that right by engaging in the actions the defendants engaged in?

On the first prong of the test, the Court ruled that there was sufficient case law established prior to 1995 that clearly established plaintiff's right. The court cited a number of cases, highlighting the Jeffries case in which a faculty members "racially biased" comments about the City University of New York were found to qualify for constitutional protection[15]. For the second prong of the test, the Court also found that while the defendants were correct in stating that a reasonable person would not know that a refusal to hire based on comments made about curriculum is illegal, the comments were not simply about curricular issues, but were instead about issues of public concern. Therefore, a reasonable person would have known that such a practice was in violation of the plaintiff's right.

Discussion

The court essentially ruled that the speech by a

faculty member is protected speech, so long is it involves an issue of public concern, and that the burden rests on the faculty member to prove that such speech does involve public issues, not merely issues private to the institution. If the faculty member is unable to prove that the speech is about public issues, courts may be less likely to protect a faculty member's speech. Academic freedom therefore, at least as understood as an element of first amendment law, does not offer a blanket protection to all statements made by faculty in an academic setting, and instead is seen as offering limited protection only to those statements that involve issues that involve public policy.

Kincaid v. Gibson

A student and former student at Kentucky State University, Charles Kincaid and Capri Coffer, both of whom worked for the school yearbook and the school newspaper, brought action against the Kentucky State University administration, most notably Ms.Betty Gibson. Kincaid and Coffer claim that the 1992-94 yearbook was being withheld from distribution by the university because the university disagreed with the content and presentation of the yearbook. In addition, Kincaid and Coffer also claim that the university is attempting to control the content of the school newspaper, to "quell anything negative in the publications regarding Kentucky State University." Kincaid and Coffer claim that refusal by the administration to distribute the yearbook and the administration's interference with the newspaper violate both their constitutional rights to freedom of speech and their contractual rights to receive the yearbook, which is supported in part b a mandatory student fee which both students claimed to have paid.

The specific complaint by the students was that:

> the ban of the yearbook and the control of the newspaper violate their First Amendment rights of speech and association. They also allege that the ban of the yearbook violates their Fourteenth Amendment rights of due process by depriving them of their property rights. Finally, they allege that the ban of the yearbook represents a breach of contract and an arbitrary and capricious governmental action.

The court had already addressed two of the claims, and found that the plaintiffs had not established a constitutionally protected right through paying the student fee, and that plaintiffs had no clear argument to support their claim of an infringement on freedom of association. The court was therefore left to decide only (1) the plaintiff's claim of a free speech violation concerning (1a) the newspaper and (1b) the yearbook, (2) a contractual violation under the student activity fee claim, and (3) the plaintiffs claim of arbitrary and capricious action by the defendants.

Findings

(1a) The court found no basis for a free speech violation concerning the newspaper. The court found that defendants had no standing to bring such a claim. There was no evidence to show that actual censorship ever took place, and even though the advisor to the newspaper was removed from that position, she was subsequently

reappointed.

The plaintiff's legal argument rest on a citation from *Antonelli*[16]. The plaintiffs cited this case in support of their claim that the threat of possible prior restraint is a sufficient claim to actual injury. The court disagreed[17], and argued that there was no real injury in this case: No attempt at censorship;no call fro prior review of the publication; no real showing of any type of past of possible future prior restraint.

(1b) The Court ruled that there was no first amendment violation concerning the yearbook because the yearbook was not a public forum. In a public forum or even a limited public forum[18], the state has little power to regulate speech, and can only do so by showing a "narrow and compelling" reason for the action. However, if there is not a public or limited public forum, the state can regulate speech simply by making a showing of reasonableness and that the regulation is not "merely because public officials oppose the speaker's point of view[19]"

Public Forum

In Bazaar v. Fortune[20], the Court, commenting in the dicta, noted that it considered all university publications to be open fora, and therefore the state could only regulate such material according to the narrow and compelling interest standard. However, in *Hazelwood*[21], the Supreme Court found that a high school sponsored publication designed as a part of the curriculum and the educational process, was not a public forum. The key finding, according to Joseph Hood, the judge in the Kentucky case, was "the intent of the publisher to create a

public forum." In Hazelwood it was clear that the publisher did not intend to make the newspaper a public forum.

Following Hazelwood, in *Yeo*[22], the First Circuit ruled that the advertising pages of a school yearbook were a limited public forum, in that those pages were opened up to the public. The court in that case did also note that a yearbook in general is not considered a public forum. However, in *Planned Parenthood v. Clark*[23], the Ninth Circuit ruled that the advertising pages in school publications were not public fora, but were instead best considered as limited publications for a specific audience.

The court in the Kentucky case was more persuaded by the *Planned Parenthood* case than by the *Yeo* case, and even if *Yeo* was used, the Kentucky court could not find evidence that the yearbook was intended to be a public forum.

Given that the Yearbook was not a public forum, the state merely had to meet the reasonable standard rater than the narrow and compelling interest standard. The court found that the state clearly met the reasonableness standard. Citing Hazelwood:

> "[A] school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," not only from speech that would substantially interfere with [its] work ... or impinge upon the rights of other students," but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced,

> vulgar or profane, or unsuitable for immature audiences. A school must be able to set high standards for the student speech that is disseminated under its auspices -- standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the 'real' world -- and may refuse to disseminate student speech that does not meet those standards.[24]"

In sum, the Court in the Kentucky case applied the Hazelwood decision, a decision concerning a high school publication, to the case here, a case involving a university publication. Under this ruling, at least in Kentucky, universities are free to consider school publication, possibly including newspaper, to be a part of a nonpublic forum, and therefore open to regulation by the administration.

Loving v. Boren

Bill Loving, a faculty member at the University of Oklahoma, filed suit[25] against David Boren, president of the University of Oklahoma, after Boren announced a policy of restricting access to certain newsgroups on the Internet, news groups which Boren believed could be found to be carrying obscene material in violation of the state law. Boren's action came after a visit by a member of the Oklahoma legislature concerned with the availability of such material on the Oklahoma campus server. Both the District Court for the Western District of Oklahoma[26], and

the Tenth Circuit Court of Appeals[27], found that Loving failed to show any actual injury in the case, and therefore denied Loving's claim.

In the complaint filed by Loving, who represented himself in the matter, he asked that the policy be declared unconstitutional as prior restraint on speech and press, and that an injunction be issued to stop the University from enacting the policy. Loving argued that the new policy would have the effect of restricting access to certain newsgroups, newsgroups that Loving could use as part of his teaching and research.

In his argument that the new policy was in violation of the First Amendment, Loving claimed that Oklahoma could only act to restrict access to the newsgroups if the state could make a case for a "compelling government interest" with "minimal intrusion into constitutionally protected dissemination of information, ideas, and opinions[28]," and that the new policy did not meet this test. Furthermore, Boren's actions precluded a judicial hearing to debate the merits of the policy, and that the new policy would restrict Loving's ability to speak in public on the censored newsgroups. As an alternative argument, Loving claimed that the Internet was a public forum, and that in allowing a public forum on campus, the University could then not restrict material based on the content of that material.

Loving filed the claim in District Court and the matter was heard on January 17, 1997. The District Court, under Judge Wayne E. Alley, reported the findings on January 28, 1997. Alley found that Loving failed to make a case for any relief as he failed to show any injury. At the trial, Loving did not submit any evidence to show that

there was any harm from the policy. Thus, Alley found for the Defendant. Alley also noted that the new policy instituted by Oklahoma, offering a restricted and nonrestricted news server, met constitutional requirements. Thus, there was no case for injunctive relief, because of lack of evidence, and no case for declarative relief, as the new policy made Loving's case moot. The court also noted that during the period when the news groups were blocked from the University of Oklahoma server, they could still be accessed by University of Oklahoma computers via alternate servers available through University of Oklahoma computers. Therefore, there never was any true restriction of access. Loving appealed the findings to the Tenth Circuit Court of Appeals. That Court affirmed the District Court, noting that Loving failed to show evidence of any injury, even given the lessened conditions concerning this requirement in a First Amendment case.

Discussion

Essentially, the Court declined to discuss Loving's contentions, focusing instead on the procedural argument of lack of standing. The Courts did give their blessing to the University of Oklahoma policy of restricted and nonrestricted servers, setting up a two-tier classification of information. The Loving case indicates one of the difficulties concerning academic freedom and freedom of expression in the electronic age, especially given the availability blocking software for the Internet. Restrictions such as the one proposed by University of Oklahoma, while meeting constitutional standards (at least according to the Courts in the case and appeal) can still create a chilling atmosphere for those doing research in areas

outside the mainstream.

These three cases offer an interesting look at some of the key issues concerning academic freedom and freedom of expression. In the case of *Hall*, we see that there is a clear danger of faculty members having to choose between gainful employment and the expression of unpopular opinions. That the burden is on the faculty member to prove that the expression is of a public nature means that much classroom expression could be prohibited. In *Kincaid*, the extension of a principle announced by the Supreme Court that allows high school administrators to control the content of student publications has been extended to the college level. Once again, the burden is on the academic, this time in the guise of student (though just as easily a faculty member serving as an advisor), to prove that the expression is uttered in a public forum, not as part of state-sponsored expression. And finally, in *Loving*, we can see some of the problems that academic freedom and freedom of expression may be facing with the emerging communication technologies. As noted at the outset of this essay, academic freedom is far from a settled and legally binding concept. Instead, academic freedom, and freedom of expression for those who make their living in the academy, is always in contention.

Notes

[1]The definitive study on the development of academic freedom is Hofstadter and Metzger's *The Development of Academic Freedom in the United States.* The Hofstadter and Metzger text is a bit dated, having been completed in 1955. However, the basic rhetorical (and sometimes) legal text having to do with academic freedom was completed in 1940, the statement of the American Association of University professors' on academic freedom. This document (revised in 1989 and 1990) still informs current thought and practice on academic freedom for the university instructor.

[2]Hofstadter and Metzger, 263.

[3]Hofstadter and Metzger, 488.

[4]Hofstadter and Metzger, 489-90.

[5]For a more detailed discussion of this particular period and the struggle for academic freedom, see Ellen W. Schrecker's *No Ivory Tower: McCarthyism & The Universities.*

[6]Hofstadter and Metzger, 403.

[7]Hall v. Kutztown.

[8]Hall v. Kutztown.

[9]Hall v. Kutztown.

[10]Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997).

[11]Connick v. Myers, 461 U.S. 138 (1983).

[12]Rankin v. Mcpherson, 483 U.S. 378 (1987); Givhan v. Western Line Consol. Sch. Dist., 439 U.S. 410 (1979); Johnson v. Lincoln Univ., 776 F.2d 443 (3d Cir. 1985.)

[13]Pickering v. Board of Educ. of Township High Sch.Dist.

205, Will County, 391 U.S. 563 (1986).

[14]Grant v. City of Pittsburgh, 98 F.3d 116 (3d Cir. 1996).

[15]Jeffries v. Harleston, 21 F.3d 1238 (2d Cir.)

[16]Antonelli v. Hammond, 308 F. Supp. 1329 (D. Mass. 1970).

[17]Northeastern-Florida Chapter of Associated Gen. Contractors v. City of Jacksonsville, 508 U.S. 656; Briggs v. Ohio Elections Com'n, 61 F.3d 487; and Greater Cincinnati Coalition for the Homeless v. City of Cincinnati, 56 F.3d 710 (6th Cir. 1995).

[18]Perry Educ. Ass'n v. Perry Local-Editors' Assn, 460 U.S. 37 (1983).

[19]Perry at 45-46.

[20]Bazaar v. Fortune. 476 F.2d 570 (5th Cir. 1973)

[21]Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).

[22]Yeo v. Town of Lexington, WL 292173 (lst Cir. 1997).

[23]Planned Parenthood v. Clark Co. Sch. Dist., 941 F.2d 817 (9th Cir. 1991).

[24]Hazelwood v. Kuhlmeier.

[25]Loving v. Boren. Complaint filed in the US District Court for the Western Part of Oklahoma. http://chronicle.com/che-data/focus.dir/data.dir/0113.98/loving.htm

[26]Loving v. Boren. File CIV-96-657-A from the US District Court For The Western part Of Oklahoma. http://chronicle.com/che-data/focus.dir/data.dir/0113.98/loving.htm

[27]Loving. v. Boren. File 97-6086 from the 10th Circuit Court of Appeals. http://chronicle.com/che-data/focus.dir/data.dir/0113.98/12loving.htm

[28]Loving, Complaint.